

## **Remarks**

The above Amendments and these Remarks are in reply to the Final Office Action mailed May 31, 2005.

Claims 1-32 and 47 were pending in the Application prior to the Final Office Action. In the Final Office Action, the Examiner rejected Claims 1-32 and 47. In the present reply, the Applicant respectfully requests that the Examiner enter this amendment to Claims 1-2 and 47, add claims 48-50 and cancel claims 13-32, since it is the Applicants belief that Claims 1-12 and 47-50 are now in condition for allowance.

## **Rejections Under 35 USC 102**

Within the Office Action, Claims 1-32 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,755,841 to Fraser et al. (hereinafter Fraser). Claims 13-15, 17, 20-27 and 30-32 have been cancelled. The Applicant previously withdrew Claims 16, 18, 19, 28 and 29. Thus the Examiner's rejection is directed to Claims 1-12.

The Applicant has modified Claim 1, introducing the limitation that the first cutting blades extend from the inner side of each of the tines and extend in a first direction and are adapted to cut in the first direction while the second cutting blades extend from the outer side of each of the tines and extend in a second direction and are adapted to cut in the second direction, wherein the second direction is opposite the first direction. The Examiner states that Fraser discloses a cutter having a forked end having two tines, a first cutting blade located on the inner side of each tine and a second cutting blade located on an outer side of each tine. However, the cutting blade on the inner side of each tine (50A and 50B) is not adapted to cut a groove in a direction opposite to the cutting blades on the outer side of each tine. Thus, Fraser does

not disclose all elements of the amended claim 1. Accordingly, Claim 1 is novel and is believed to be in condition for allowance.

Claim 2 is amended such that the cutting blades are parallel to the handle of the tool. In Fraser, the tines (50A and 50B) are used to separate the vertebrae and are not parallel to the handle of the tool. Accordingly, Claim 2 is in condition for allowance.

Claims 2-12 are dependent on independent Claim 1. Since Claim 1 is now clearly distinguishable over the disclosure of Fraser, and is therefore allowable, Claims 2-12 are also allowable as depending on an allowable base claim.

Claims 1-4, 7-15, 17, 20-27, 30-32 and 47 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,582,437 to Dorchak et al. (hereinafter Dorchak). Claims 13-15, 17, 20-27 and 30-32 have been cancelled. Thus the Examiner's rejection is directed to Claims 1-4, 7-12 and 47.

Currently amended Claim 1, introduces the limitation that the first cutting blades extend from the inner side of each of the tines and extend in a first direction and are adapted to cut in the first direction while the second cutting blades extend from the outer side of each of the tines and extend in a second vertical direction and are adapted to cut in the second direction, wherein the second direction is opposite the first direction. Dorchak discloses in Figure 36 a tool having a shaft 272 with a forked portion 280 angled upward with respect to the shaft 272. The forked portion 280 includes a pair of pointed ends which are the blades 278 (Dorchak, Col 19, Line 62; Figure 36). In operation, the tool is inserted into the implanted fusion cage, whereby the pointed blades 278 are used to scrape bone away from the vertebral bodies from within the fusion cage (see Figure 32) by moving the handle in a back and forth motion. However, the cutting blade on the inner side of each tine (278) is not adapted to cut a groove in a vertical direction opposite to the cutting blades on the outer side of each tine. Thus, Dorchak does not disclose all

elements of the amended claim 1. Accordingly, Claim 1 is novel and is believed to be in condition for allowance.

Claim 2 is amended such that the cutting blades are parallel to the handle of the tool. In Dorchak, the tines (278) are not parallel to the handle of the tool. Accordingly, Claim 2 is novel and is believed to be in condition for allowance.

Claims 3-4 and 7-12 are dependent on independent Claim 1. Since Claim 1 is now clearly distinguishable over the disclosure of Dorchak, and is therefore allowable, Claims 3-4 and 7-12 are also allowable as depending on an allowable base claim.

Currently amended Claim 47 provides the further limitation on the first and second cutting blades that they are parallel to one another and the second cutting blades are outboard of and spaced from the first cutting blades. The cutting blades in Dorchak are not parallel to one another. In addition, the Examiner states in point 7 that “[i]n Figure 36 of Dorchak, the tips 5[2]78 are considered to be the blades and the cutting edges are at the tips ...”, thus the inner and outer blades meet at a point rather than being spaced from each other as in Claim 47. Dorchak does not disclose this element of Claim 47. Thus Claim 47 is novel and is believed to be in condition for allowance.

## New Claims

Applicants have added new Claims 48-50. The Applicants submit that the new claims are supported by the specification and allowable over the prior art.

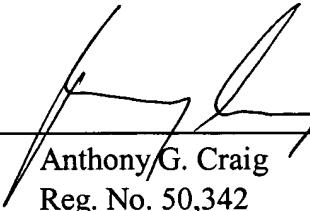
In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is

respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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